

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1448 be amended to read as follows:

- 1 Page 1, line 5, delete "IC 6-8-13-15(e)." and insert "**IC**
- 2 **6-8-13-21(e).**".
- 3 Page 2, between lines 36 and 37, begin a new paragraph and insert:
- 4 "**Sec. 1. As used in this chapter, "account" means a long term**
- 5 **care savings account established under section 21(e) of this**
- 6 **chapter.**
- 7 **Sec. 2. As used in this chapter, "board" refers to the board of**
- 8 **directors of the plan established by section 13 of this chapter.**".
- 9 Page 2, line 37, delete "Sec. 1." and insert "**Sec. 3.**".
- 10 Page 3, line 2, delete "Sec. 2." and insert "**Sec. 4.**".
- 11 Page 3, line 4, delete "Sec. 3." and insert "**Sec. 5.**".
- 12 Page 3, line 6, delete "Sec. 4." and insert "**Sec. 6.**".
- 13 Page 3, line 8, delete "Sec. 5." and insert "**Sec. 7.**".
- 14 Page 3, line 10, delete "Sec. 6." and insert "**Sec. 8.**".
- 15 Page 3, line 11, after "section" delete "9(a)" and insert "**12(a)**".
- 16 Page 3, line 12, delete "Sec. 7." and insert "**Sec. 9.**".
- 17 Page 3, line 14, delete "Sec. 8." and insert "**Sec. 10.**".
- 18 Page 3, between lines 15 and 16, begin a new paragraph and insert:
- 19 "**Sec. 11. As used in this chapter, "trust" refers to the Indiana**
- 20 **long term care savings plan trust established by section 21(a) of**
- 21 **this chapter.**".
- 22 Page 3, line 16, delete "Sec. 9." and insert "**Sec. 12.**".
- 23 Page 3, line 19, delete "department of financial institutions shall"
- 24 and insert "**board may:**

1           **(1) administer the plan;**

2           **(2)".**

3           Page 3, line 21, after "deposits" delete "." and insert "; or

4           **(3) both."**

5           Page 3, between lines 21 and 22, begin a new paragraph and insert:

6           **"Sec. 13. (a) The board of directors of the plan is established.**

7           **The board consists of the following:**

8           **(1) The following serve as ex officio members or directors:**

9           **(A) The treasurer of state.**

10          **(B) The commissioner of the department of insurance.**

11          **(2) Three (3) members or directors appointed by the governor**  
12          **as follows:**

13          **(A) One (1) member or director must be a representative**  
14          **of the long term care planning industry.**

15          **(B) One (1) member or director must be a financial**  
16          **planning professional.**

17          **(b) During a member's term of service on the board, an**  
18          **appointed member of the board may not be an official or employee**  
19          **of the state.**

20          **(c) Not more than two (2) of the appointed members of the**  
21          **board may belong to the same political party.**

22          **(d) An appointed member serves a four (4) year term. An**  
23          **appointed member shall hold over after the expiration of the**  
24          **member's term until the member's successor is appointed and**  
25          **qualified.**

26          **(e) The governor may reappoint an appointed member of the**  
27          **board.**

28          **(f) A vacancy shall be filled for the balance of an unexpired term**  
29          **in the same manner as the original appointment.**

30          **(g) The treasurer of state shall serve as the chairperson of the**  
31          **board. The commissioner of insurance shall serve as the**  
32          **vice-chairperson. The board annually may elect any other officer**  
33          **that the board desires.**

34          **(h) The governor may remove an appointed member for**  
35          **misfeasance, malfeasance, willful neglect of duty, or other cause**  
36          **after notice and a public hearing, unless the member expressly**  
37          **waives the notice and hearing in writing.**

38          **(i) An ex officio member of the board may designate a person to**  
39          **serve as an ex officio member of the board in the absence of the ex**  
40          **officio member.**

41          **Sec. 14. (a) An appointed member of the board is not entitled to**  
42          **the minimum salary per diem provided by IC 4-10-11-2.1(b).**  
43          **However, each appointed member is entitled to reimbursement for**  
44          **traveling expenses and other reasonable expenses actually incurred**  
45          **in connection with the member's duties.**

46          **(b) An ex officio member of the board is entitled to**  
47          **reimbursement for traveling expenses and other reasonable**

1 expenses actually incurred in connection with the member's duties.

2 Sec. 15. (a) Three (3) members of the board are a quorum for  
3 the transaction of business at a meeting of the board.

4 (b) This subsection applies to a meeting of the board at which at  
5 least three (3) members of the board are physically present at the  
6 place where the meeting is conducted. A member of the board may  
7 participate in a meeting of the board by using a means of  
8 communication that permits:

9 (1) the member;

10 (2) all other members participating in the meeting; and

11 (3) all members of the public physically present at the place  
12 where the meeting is conducted;

13 to simultaneously communicate with each other during the  
14 meeting. If a meeting is held under this subsection, the memoranda  
15 of the meeting prepared under IC 5-14-1.5-4 must state the name  
16 of each member who was physically present at the place where the  
17 meeting was conducted, who participated in the meeting by using  
18 a means of communication described in this subsection, and who  
19 was absent from the meeting.

20 (c) The affirmative vote of a majority of all members of the  
21 board who are present is necessary for the board to take action.

22 (d) The board shall meet at the call of the chairperson and at  
23 other times as the board by rule may provide.

24 (e) Meetings of the board may be held anywhere in Indiana.

25 (f) A manager or another person designated by resolution of the  
26 board:

27 (1) shall keep a record of the meetings of the board; and

28 (2) shall be custodian of:

29 (A) all books, documents, and papers filed with the board;  
30 and

31 (B) the minute book or journal of the board.

32 Sec. 16. (a) The board has all powers necessary or convenient to  
33 carry out the purposes and objectives of this chapter, and the  
34 powers delegated by law or executive orders, including the  
35 following powers:

36 (1) To develop and implement the plan, and other services  
37 consistent with the purposes and objectives of this chapter,  
38 through:

39 (A) rules or emergency rules adopted under IC 4-22-2; or

40 (B) guidelines, procedures, or policies established by the  
41 board.

42 (2) To select and enter into agreements with one (1) or more  
43 financial institutions to receive contributions in the form of  
44 account deposits.

45 (3) To select and retain professional services, including the  
46 following:

47 (A) Financial advisers and managers.

- 1 (B) Custodians and other fiduciaries.
- 2 (C) Investment advisers and managers.
- 3 (D) Accountants and auditors.
- 4 (E) Consultants or other experts.
- 5 (F) Actuarial services providers.
- 6 (G) Attorneys.
- 7 (4) To establish minimum account deposit amounts (both
- 8 initial and periodic).
- 9 (5) To establish investment guidelines, objectives, and
- 10 performance standards for assets held by the trust in the
- 11 manner provided by IC 30-4-3-3.
- 12 (6) To employ persons, if the board chooses, and as are
- 13 necessary, including a manager who is not a member of the
- 14 board, and to fix the terms of their employment.
- 15 (7) To recommend legislation to the governor and the general
- 16 assembly.
- 17 (8) To adopt rules, bylaws, procedures, guidelines, and
- 18 policies as are necessary to carry out the long term care
- 19 savings plan and services.
- 20 (9) To interpret this chapter broadly, in rules, policies,
- 21 guidelines, and procedures, in light of the purposes and
- 22 objectives of this chapter.
- 23 (10) To charge, impose, and collect administrative fees and
- 24 service charges in connection with any agreement, contract,
- 25 or transaction under the plan.
- 26 (11) To approve a fee, commission, or expense that directly or
- 27 indirectly affects the return on investment of the assets of the
- 28 trust.
- 29 (b) The board shall prepare an annual report for the plan and
- 30 promptly transmit the annual report to the governor and the
- 31 general assembly. The board shall make available, upon request,
- 32 copies of the annual report to participants and the public, and shall
- 33 post the annual report, or a link to the annual report, on the web
- 34 page of the treasurer of state. A report transmitted under this
- 35 section to the general assembly must be in an electronic format
- 36 under IC 5-14-6.
- 37 (c) Before the implementation of the trust established by section
- 38 21 of this chapter:
- 39 (1) the board chairperson;
- 40 (2) the board vice-chairperson;
- 41 (3) the manager; and
- 42 (4) any officer or employee of the board who is authorized by
- 43 resolution to handle funds or sign checks;
- 44 shall execute a surety bond in the penal sum of one hundred
- 45 thousand dollars (\$100,000). The surety bond must be conditioned
- 46 upon the faithful performance of the duties of the office of the
- 47 principal and shall be executed by a surety company authorized to

transact business in Indiana. The board shall pay the cost of the bonds.

**Sec. 17. (a) The board may accept gifts, bequest, donations, and devises of personal and real property:**

(1) as trustees for the maintenance, use, or benefit of the plan or the trust; or

(2) to be administered for other public or charitable purposes for the benefit or use of participants.

**(b) The board may receive, accept, hold, administer, and use any property transferred to the board by gift, bequest, donation, or devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed of the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the board, the plan, the trust, or the participants, as applicable.**

**(c) The board may, if not inconsistent with the terms and conditions of a gift of real property:**

(1) sell, convey, or otherwise dispose of the real property; and

(2) invest, reinvest, or use the proceeds as, in the judgment of the board, is of the greatest benefit to the board, the plan, the trust, and the participants.

**(d) When acting under the powers granted by this chapter, members of the board serve as trustees of a private trust, subject to:**

(1) the terms and conditions of:

(A) the plan; or

(B) the gift, bequest, donation, or devise; and

(2) the law applicable to private trusts.

**Sec. 18. The board shall do the following:**

(1) Provide each member, officer, employee, consultant, counsel, and agent of the board a defense in a suit arising out of the performance of duties for or on behalf of the board or the plan, if the board determines that the duties were performed in good faith.

(2) Save a person described in subdivision (1) harmless from any liability, cost, or damage in connection with an action arising out of the performance of duties for or on behalf of the board or the plan, including the payment of any legal fees, except where the liability, cost, or damage is predicated on, or arises out of the bad faith of the person, or is based on the person's malfeasance in the performance of duties."

Page 3, line 22, delete "Sec. 10." and insert "Sec. 19."

Page 3, line 23, after "by" insert ":

(1) entering into a participation agreement with the board, if the board administers the plan; or

(2)".

Page 3, line 24, delete "department of financial" and insert "**board**".

- 1 Page 3, line 25, delete "institutions".
- 2 Page 3, line 25, after "section" delete "9(b)" and insert "**12(b)**".
- 3 Page 3, line 26, delete "under" and insert "**to**".
- 4 Page 3, line 26, delete "to an" and insert "**established**".
- 5 Page 3, delete line 27.
- 6 Page 3, line 28, delete "financial institutions has an agreement".
- 7 Page 3, line 28 after "section" delete "9(b)" and insert "**12(a)**".
- 8 Page 3, line 38, delete "department of" and insert "**board**".
- 9 Page 3, delete line 39.
- 10 Page 4, line 3, after "section" delete "9(a)" and insert "**12(a)**".
- 11 Page 4, line 10, delete "Sec. 11." and insert "**Sec. 20**".
- 12 Page 4, between lines 13 and 14, begin a new paragraph and insert:
- 13 "**Sec 21. (a) The Indiana long term care savings plan trust is**
- 14 **established, separate and distinct from all other entities, and shall**
- 15 **be maintained for the purposes of providing a source of money to**
- 16 **pay:**
- 17 (1) a participant's eligible long term care expenses; and
- 18 (2) the costs of administering the plan.
- 19 (b) The board is the trustee of the trust and is responsible for
- 20 the administration, operation, and maintenance of the trust.
- 21 (c) The trust consists of the following:
- 22 (1) Each participant's contributions to the plan.
- 23 (2) All earnings on investments or deposits of the plan.
- 24 (3) All gifts, grants, devises, or bequests in money, property,
- 25 or another form made to the plan.
- 26 (4) All contributions or payments to the plan made in a
- 27 manner provided by the general assembly.
- 28 (d) The administrative costs of the plan, including the surety
- 29 bond required by section 16(c) of this chapter, shall be paid from
- 30 the earnings of the trust before the earnings are credited to
- 31 participants' accounts.
- 32 (e) The board shall establish an account for each participant.
- 33 Each participant's account shall be credited with:
- 34 (1) the contributions made to the plan by the participant; and
- 35 (2) after the costs described in subsection (d), the earnings
- 36 attributable to the balance of the account.
- 37 **Sec. 22. (a) The board has all powers necessary to carry out the**
- 38 **purposes, objectives, and provisions of the trust established by**
- 39 **section 21(a) of this chapter, including the powers provided under**
- 40 **IC 30-4 for trustees of a private trust.**
- 41 (b) The board has the fiduciary responsibility to make all
- 42 decisions regarding the investment of the money in the trust,
- 43 including the selection of all investment options and the approval
- 44 of all fees and other costs charged to trust assets, including the
- 45 costs of administration, operation, and maintenance of the trust, in
- 46 the manner provided by IC 30-4 for trustees of a private trust."
- 47 Page 4, line 14, delete "Sec. 12." and insert "**Sec. 23**".

- 1       Page 4, line 14, delete "department of financial institutions" and
- 2       insert "**board**".
- 3       Page 4, line 17, delete "Sec. 13." and insert "**Sec. 24.**".  
(Reference is to HB 1448 as printed February 20, 2009.)

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Representative Turner